IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

OP.No. 14696 of 1999(Y)

PETITIONER:

M.M.IBRAHIMKUTTY,
S/O.HAJEE M., A.MEERAN , MAULAVI,
MANAGER, JUMA-ATH HIGH SCHOOL,
THANDEKKAD, MUDICKAL P.O., PERUMBAVOOR.

BY ADV. SRI.BABU KARUKAPADATH
SRI.M.M.ABDUL AZIZ (SR.)

RESPONDENTS:

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1. **STATE OF KERALA. REP.BY THE SECRETARY,**
GENERAL EDUCATION (E) DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. **DISTRICT EDUCATIONAL OFFICER,**
KOTHAMANGALALM, ERNAKULAM DISTRICT.

3. **Y.SARAMMA, W/O.BABY MALIKUDY HOUSE,**
VALAYANCHIRANGARA P.O. VIA PERUMBAVOOR.

4. **V.A.VAHITHA RAHIMAN, HSA (HINDI)**
JUMA-ATH HIGH SCHOOL, THANDEKKAD,
MUDICKAL P.O., PERUMBAVOOR.

ADDL.R5 IMPLEADED.

5. **A.M.RUGMANI AMMA, RETIRED HINDI TEACHER**
REKHA NIVAS, MALAYIDAM THURUTHU P.O.,
VIA PERUMBAVOOR.

IS IMPLEADED AS ADDL.R5 AS PER ORDER DT.24.6.99 IN CMP. 24971/99 IN OP. 14696/99.

BY ADV. SRI.G.RAJAGOPAL
SRI.K.JAJU BABU
BY GOVERNMENT PLEADER SRI.SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, ALONG WITH OP NO. 19844 OF 1999,WP(C) 7780/06 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.14696/1999

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPORT OF JUMA-ATH COMMITTEE OF THE CORPORATE EDUCATIONAL AGENCY OF THE SCHOOL SENT TO THE PETITIONER DT.24.10.1997.

EXT.P2:- COPY OF THE EXPLANATION TO THE SHOW CAUSE NOTICE BY A.N.RUGMINI AMMA TO THE PETITIONER.

E.XT.P3:- COPY OF THE COMPLAINT OF THE 3RD RESPONDENT AND LETTER DT.9.7.98.

EXT.P4:- COPY OF THE DETAILED REMARKS OF THE PETITIONER DT.23.7.98.

EXT.P5:- COPY OF THE APPOINTING LETTER DT. 16.7.98 BY THE PETITIONER TO THE 3RD RESPONDENT .

EXT.P6:- COPY OF THE ORDER NO.B3-4856/98/K.DIS DT.23.10.98.

EXT.P7:- COPY OF THE ORDER NO.B4-36963/98/K.DIS DT.23.4.99 BY THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE ORDER DT.25.8.98 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT .

EXT.P9:- COPY OF THE NOTICE DT.18.3.99 SENT BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE OBJECTION BY THE PETITIONER DT.24.3.99 TO THE 1ST RESPONDENT.

EXT.P11:-COPY OF THE GOVERNMENT ORDER DT.29.5.99 NO.G.O. RT 2459/99/G.EDN.

/TRUE COPY/

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S.SIRI JAGAN, J.

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O.P.Nos.14696/1999, 19844/1999
& W.P.(C).No.7780/2006

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Dated this the 17th day of January, 2007

J U D G M E N T

The manager of Juma-Ath High School, Thandekkad, Perumbavoor, and two aspirants for appointment to the post of H.S.A. (Hindi) in his school, are the petitioners in these writ petitions. The bone of contention in these writ petitions is the right to appointment as H.S.A (Hindi) in the school consequent on the retirement of the additional 5th respondent in O.P. No.14696/1999. For the sake of convenience, in this judgment I will refer to the petitioners in the three writ petitions as manager, Smt.Saramma and Smt.Shereena Beevi. The other respondents are referred to by their rank as respondents in O.P.No.14696/99. Smt.Saramma had earlier approved service in temporary vacancies in the school from

9.1.1984 to 5.4.1984 and from 2.1.1986 to 31.3.1986. Consequently, she earned a right to claim appointment in future vacancies of H.S.A (Hindi) in that school by virtue of Rule 51A of Chapter XIV A of the Kerala Education Rules (KER). The additional 5th respondent was due to retire from the school on 31.3.1999. Prior to retirement she wanted to take leave for the period from 27.7.1998 to 29.9.1998 for the purpose of marriage of her daughter. The manager alleged that Smt.Saramma entered into a pecuniary arrangement with the additional 5th respondent by which the additional 5th respondent agreed to take half pay leave for the remaining period of her service as Hindi teacher in the high school section, for which the said Smt.Saramma offered to pay her an amount of Rs.36,000/-. This was allegedly a corrupt and illegal motive to secure minimum service for the third respondent as Hindi Teacher, for being eligible for pensionary benefits from the Government. The educational agency and the manager

took objection to this and issued a show cause notice to the additional 5th respondent through the headmaster. It is submitted that the additional 5th respondent submitted an explanation admitting the aforesaid pecuniary arrangement between her and the third respondent as per Ext.P2. It appears that Smt.Saramma filed a complaint regarding her non-appointment in the vacancy before the 2nd respondent, in respect of which the 2nd respondent directed the manager to give his remarks. The manager sent his remarks, Ext.P4. The 2nd respondent is stated to have made enquiries and found that the explanation furnished by the manager was correct. Thereafter, the Manager sent a letter dated 16.7.1998 to Smt.Saramma in reply to her application dated 5.9.1997 for appointment as Hindi teacher in the school stating that she was disqualified from being appointed in the school for the misconduct of violation of Rule 4 of Chapter XIV B of the Kerala Education Rules. In the meanwhile, the additional 5th respondent took leave

from 27.7.1998 to 29.9.1998. To that post, the manager appointed the 4th respondent. The 2nd respondent refused to approve the appointment of the 4th respondent as per Ext.P6 order on the ground that there is a 51A claimant, viz., Smt.Saramma. The manager filed appeal against Ext.P6, which was allowed directing approval of appointment of the 4th respondent. By Ext.P8 order dated 25.8.1998 the 2nd respondent intimated Smt.Saramma that she has no right to claim appointment and to approach the manager to get the claim under Rule 51A established. Thereafter, the manager received Ext.P9 notice on an appeal filed by Smt.Saramma against Ext.P8 order. The manager filed Ext.P10 objections to the same. However, by Ext.P11 order the Government upheld the claim of Smt.Saramma for appointment as 51A claimant in the leave vacancy with effect from 27.7.1998. Ext.P11 order, of the Government is under challenge in O.P.No. 14696/1999. Before Ext.P11 order was passed, the Deputy Director of Education, Ernakulam passed

Ext.P4 order in O.P.No.19844/1999 in an appeal filed by the manager in which the D.E.O. was directed to approve the appointment of the 4th respondent in O.P.No.14696/1999. On the basis of Ext.P11 order in O.P.No.14696/1999, which is Ext.P3 in O.P.No.19844/1999, the said Smt.Saramma is challenging Ext.P4 order in O.P.No.19844/99. While these writ petitions were pending, it appears that subsequently there was reduction of staff strength in the school, and thereafter a vacancy arose on 1.6.2004. Smt.Shereena Beevi, an L.G. Hindi teacher in the same school raised a claim for promotion to the post under Rule 43 of Chapter XIVA of the KER. In W.P.(C).No. 7780/2006 Smt.Shereena Beevi seeks a direction to the respondents to treat her as H.S.A. (Hindi) in the said school from 1.6.2004 as she has priority in claim as against a 51A claimant.

2. I have considered the rival contentions of the parties in this writ petitions.

3. The contention of the manager is that Smt.Saramma became disqualified to claim

appointment to the post by virtue of Rule 4 of Chapter XIV(B) of the K.E.R. Rule 4 of Chapter XIV B reads as follows:

> "**4.** No teacher shall enter into any pecuniary arrangement for the resignation by any of them or for the taking of leave for the benefit of the other. Should this Rule be infringed, any nomination or appointment consequent upon such resignation or leave will be cancelled and such parties to the arrangement as are still in the service will be suspended pending the orders of competent authorities."

According to the manager, in view of the presence of the words "qualified teachers" in Rule 51A of Chapter 14A, the word, "teacher" in Rule 4 includes the 51A claimant also and therefore, the action of the manager in disqualifying Smt.Saramma for appointment to future vacancies is perfectly in order and therefore, Ext.P11 is liable to be set aside. I am not inclined agree with the counsel for the manager. The relevant portion of Rule 51A reads thus:

> "**51A.** Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same Educational Agency [or an Educational Agency to which the school may be subsequently transferred) provided they have not been appointed in permanent vacancies in schools under any other Educational Agency].

x x x x x x x x x x"

The words, "qualified teaches" appearing therein denote a teacher before his/her retrenchment consequent to which she became a 51A claimant. Therefore, I do not think that the word "teacher" in Rule 4 would relate to a 51A claimant. Further, the right of the manger to take action under the KER would be only against a teacher in his school and not against a 51A claimant. A 51A claimant is not a teacher in the school against whom disciplinary powers of the manger extend. As between Smt.Saramma and the additional 5th respondent, the word "teacher" in Rule 4 would refer only to the additional 5th respondent and not to Smt.Saramma. Further, the infringement of Rule 4 would only affect the effect of any nomination pursuant to the pecuniary arrangement being cancelled and the parties to the arrangement, who are still in the school only would be liable for suspension pending orders of the competent

authorities. There was no nomination or appointment of Smt.Saramma pursuant to the alleged pecuniary arrangement and therefore the cancellation of such nomination or appointment does not arise and since the suspension referred to in Rule 4 is expressly made applicable to only such of the parties as are still in the service of the school, Rule 4 would not take in Smt.Saramma. Further, the manager has no case that an enquiry has been conducted in respect of the alleged misconduct and consequent disqualification of Smt.Saramma with notice to her and opportunity to defend herself. Of course, the manager would contend that, as observed by the 2nd respondent in Ext.P8, Smt.Saramma had admitted the pecuniary arrangement. But I do not find any such admission in Ext.P8. What is stated in Ext.P8 is thus:

> "In this connection, you have also agreed that you have contacted Smt.Rugmini Amma and asked her to avail extension of leave along with her Half pay Leave already taken to you, also added that the matters of personal meetings with Smt.Rugmini Amma to advise her to avail extension of leave etc. are true to the best of your knowledge. But you have added that the said pecuniary arrangements etc. were not in your memory as

there was a long time span."

The same would not amount to an admission at all. That being so, it is for the manager to prove the alleged pecuniary arrangement. Apart from the version of the additional 5th respondent in respect of which Smt.Saramma had not been given an opportunity to defend there is evidence regarding involvement of Smt.Saramma in any pecuniary arrangement. The same cannot be the sole criterion for holding Smt.Saramma guilty of the alleged pecuniary arrangement. In any event, Rule 4 does not give power to the manager to disqualify a 51A claimant who is a party to pecuniary arrangement for appointment in future vacancy in the school.

4. Of course the manager has got a contention that in Ext.P10 the specific contention raised by him regarding the pecuniary arrangement has not been adverted to at all, although he would categorically admit that the other contention that the original appointment of Smt.Saramma was with a condition that she would not put forth any claim

for any future vacancy in the school, would not stand scrutiny under law. However, since I have gone into that contention in these writ petitions, I do not think it necessary to remand the matter to the Government for consideration of that question. In the above circumstances, I do not find any merit in O.P.No.14696/99 and accordingly the same is dismissed.

5. Since challenge against Ext.P11 in O.P.No.14969/99 fails, Ext.P4 in O.P.No.19844/99 would have no legs to stand and therefore Ext.P4 in that writ petition is also quashed. The result of the decisions in O.P.Nos.14696/99 and 19844/99 would be that Smt.Saramma would be entitled to be appointed to the vacancy which arose consequent upon the additional 5th respondent taking leave, which alone is the subject matter of the two writ petitions. If there has been subsequent reduction in the staff strength for subsequent years and if a future vacancy arose on 1.6.2004, the claim of Smt.Shereena Beevi, Petitioner in W.P.(C).

No.7780/2006 would be considered by the manager and the educational authorities in accordance with law and pass appropriate orders thereon. I am not entering into a finding in respect of the same only because I do not have the advantage of the facts relating to the subsequent events regarding reduction of staff strength and other developments leading to the claim of Smt.Shereena Beevi for appointment to the alleged vacancy which arose on 1.6.2004 by virtue of Rule 43 of Chapter XIVA of the Kerala Education Rules. Accordingly, W.P.(C). No.7780/06 is disposed of directing the third respondent to consider the claim of Smt.Shereena Beevi as against Smt.Saramma, if a vacancy has arisen on 1.6.2004 and decide as to who is the better claimant for the post. While considering the claim of Smt.Shereena Beevi, Smt.Saramma would also be granted an opportunity of being heard so as to enable her to put forth her claim by virtue of her status as a 51A claimant or on other grounds legally available to her. The third respondent

shall pass appropriate orders in this regard within two months from the date of receipt of a copy of this judgment.

The writ petitions are disposed of as above.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.Nos.14696/1999,
19844/1999
& W.P.(C).No.7780/2006

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J U D G M E N T

17th January, 2007